

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	4 th March 2019
REPORT TITLE	Joint Energy from Waste Project Contract Award
REPORT NUMBER	<i>RES/19/197</i>
DIRECTOR	Steven Whyte
CHIEF OFFICER	John Wilson
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TERMS OF REFERENCE	Introduction 6.

1. PURPOSE OF REPORT

To report the outcome of the OJEU procurement exercise for the proposed Energy from Waste Facility at East Tullos, (the Facility) in respect of the NESS Energy Project (the Project) seek authority to proceed to contract award with the preferred bidder, enter into the associated Stage 3 Inter Authority Agreement (IAA3) with Aberdeenshire Council and Moray Council and matters ancillary thereto, and to provide an update on the Torry Heat Network.

2. RECOMMENDATION(S)

It is recommended that the Council: -

Contract Award

- 2.1 Approve the award of the Ness Energy Project Residual Waste Treatment contract (the "Project Agreement") for the implementation of the Project with the preferred bidder in terms of the draft Project Agreement issued to the bidder immediately prior to submission of final tenders together with such minor amendments as the Project Board may agree (i) are necessary to contractualise the preferred bidder's method statements (ii) or are otherwise acceptable to the Project Board and are permitted under procurement law.
- 2.2 Delegate authority to its Representative on the Project Board to approve or reject the recommendations put to the Project Board associated with recommendations 2.1 and 2.3 subject to execution of the Inter-Authority

Agreement by Aberdeenshire Council, Moray Council and Aberdeen City Council as per recommendation 2.6 below.

- 2.3 Approve that pursuant to section 56 of the Local Government etc. (Scotland) Act 1973, the Council shall discharge the functions of Aberdeenshire Council and Moray Council as a Waste Disposal Authority (WDA) within the meaning of the Environmental Protection Act 1990 in so far as they relate to the Project and the Facility and in accordance with the Project Agreement and the Inter Authority Agreement.

Finance

- 2.4 Notes that the Council's share of the expected capital investment related to the Project Agreement as stated in the Principles of the Stage 3 Inter Authority Agreement ("IAA3 Principles") included at Appendix D can be met from the budget for NHCP810K - Energy from Waste (EfW) Construction & Torry Heat Network within the Non-Housing Capital programme, and approves the total estimated capital expenditure being the sum identified as the investment subtotal for Aberdeen City in Appendix G.
- 2.5 Notes the EfW Cost Model included in Appendix G and instructs the Chief Officer – Finance to incorporate the impact of the operating cost and the revenue share sub-totals into the Council's future revenue budget planning.

Governance

- 2.6 Delegate authority to its Representative on the Project Board to approve the terms of an Inter-Authority Agreement based on the IAA3 Principles included at Appendix D.
- 2.7 Appoint for the Works Period, Chief Officer - Capital as the Council's Representative on the Project Board; and in his absence appoints Director of Resources, or such other officer as Director of Resources may nominate from time to time, to act as the Council's alternate Representative on the Project Board during the Works Period.
- 2.8 Appoint for the Services Period, Chief Officer - Operations and Protective Services as the Council's Representative on the Project Board; and in his absence appoints Chief Operating Officer, or such other officer as the Chief Operating Officer may nominate from time to time, to act as the Council's alternate Representative on the Project Board during the Services Period.
- 2.9 Delegate authority to the officer from time to time acting in the capacity of the Council's Representative or alternate Representative on the Project Board, to take the decisions, issue the instructions, and undertake the functions stated in the column headed "Project Board" in Annex 1 (Governance Matrix) of the IAA3 Principles included at Appendix D to this report.
- 2.10 Delegate authority to Chief Officer-Capital for the duration of the Works Period, to take the decisions, issue the instructions, and undertake the functions stated in the column headed "Lead Authority Chief Officer" in Annex

1 (Governance Matrix) of the Principles of the Stage 3 Inter Authority Agreement (IAA3) included at Appendix D to this report and to sub delegate them as permitted by the Council's 'Powers Delegated to Officers', as time to time in force, under its scheme of governance.

- 2.11 Delegate authority to Chief Officer - Operations and Protective Services for the duration of the Services Period, to take the decisions, issue the instructions, and undertake the functions stated in the column headed "Lead Authority Chief Officer" in Annex 1 (Governance Matrix) of the IAA3 Principles included at Appendix D to this report and to sub delegate them as permitted by the Council's 'Powers Delegated to Officers', as time to time in force, under its scheme of governance.
- 2.12 Approve the continued role of the Joint Members Energy from Waste Engagement Group.

External Advisor Procurement

- 2.13 Delegate authority to Chief Officer-Capital, following consultation with the Head of Commercial and Procurement Services and Chief Officer Governance, to
- a) procure the services of an external legal advisor to support the Management Team throughout the Works Period; and
 - b) delegate authority to the Head of Commercial and Procurement Services, to conclude a contract with the chosen supplier; and
 - c) note that the total estimated expenditure for the external legal advisor is included in the approval of recommendation 2.4.

Collaborative Working

- 2.14 Instructs the Chief Officer - Operations and Protective Services to collaborate with the relevant officer(s) in Aberdeenshire Council and Moray Council to identify a sustainable solution which will allow items that do not meet the waste acceptance protocol to be either diverted for reuse/recycling or treated in order to be accepted at the Facility.

Torry Heat Network

- 2.15 Instructs the Chief Officer–Capital, following consultation with Chief Officer–Finance and Head of Commercial and Procurement, to negotiate and conclude Head of Terms for the heat offtake for the Torry Heat Network with the preferred bidder for the Project Agreement and to report back to the next appropriate committee outlining the planned phased delivery of the Torry Heat Network.

General

- 2.16 Note that a similar paper is being put to Moray Council's Full Council on 4 March 2019 and Aberdeenshire Council's Full Council on 7 March 2019 and that implementation of all the recommendations above, assuming they are

approved, will be subject to similar approval by Aberdeenshire Council and Moray Council.

3. BACKGROUND

The Council's Waste Strategy

- 3.1. Aberdeen City Council's Waste Strategy 2014-2025 sets out a range of key priorities aimed at delivering a sustainable and deliverable solution for waste management in Aberdeen.
- 3.2. The Zero Waste Project has already delivered on most of those priorities including the development of the materials recycling facility, changes to recycling and refuse collection services, development of new Household Waste & Recycling facilities and the refuse derived fuel (RDF) treatment facility for dealing with residual waste in the interim period whilst the energy from waste solution was progressed
- 3.3. Since 2017, the Council has been processing its residual waste as refuse derived fuel (RDF) which is then exported to energy from waste facilities in northern Europe.
- 3.4. This interim solution will allow the Council to comply with the forthcoming landfill ban, which comes into force in January 2021 as a result of the Waste (Scotland) Regulations 2012. However, business cases have demonstrated that as a long-term option an RDF solution is less sustainable than EfW and presents a higher risk to the authority as the cost, future capacity and reliability of the RDF offtake markets is uncertain.

Energy from Waste Project

- 3.5. Following an instruction from the Zero Waste Management Sub-committee in 2013, Aberdeen City Council officers approached public authorities in the north of Scotland to determine if it would be possible to develop a joint EfW project.
- 3.6. Aberdeenshire Council and Moray Council both indicated willingness to consider this option. Each council jointly and separately concluded that of the practical solutions available, the local and regional interests will best be served by collaboration on a joint EfW Facility, to be built in Aberdeen. The main factors influencing the decision were the balance of cost and risk for developing an EfW Facility in the region managed by the three councils against the export of waste to EfW facilities elsewhere, most likely in Europe.
- 3.7. The business case originally developed by Aberdeen City Council in 2013 and revised in 2015 demonstrated that whilst the net cost of export was likely to be slightly less in early years of operation, the medium and long-term costs were substantially higher. In addition, reliance on unknown and unsecured markets for export of waste was a significant risk to the three councils which may result in them not being able to fulfill their statutory duties to collect waste from households in the region.

Previous Stages

- 3.8. In the last quarter of 2015, the Councils each approved the Stage 1 Inter Authority Agreement (IAA1) which allowed work to continue between the three Councils to develop the joint solution.
- 3.9. IAA1 enabled the Councils to establish the project's governance arrangements, appoint a part time project director and interim project manager supported by external legal, financial and legal support and work together as a team to develop the detail of an appropriate solution.
- 3.10. In early October 2016, Aberdeen City Council granted Planning Permission for a 150,000 tonnes per annum (tpa) Energy from Waste Facility at East Tullos Industrial Estate Aberdeen.
- 3.11. Later in October 2016, the Councils approved the Stage 2 Inter Authority Agreement (IAA2) to allow progress of the procurement stage of the project.
- 3.12. In February 2017, the Councils launched the formal procurement exercise seeking to identify a preferred bidder who could build and operate the proposed EfW Facility by issuing an Official Journal of the European Union (OJEU) Notice.
- 3.13. A competitive dialogue multi staged procurement exercise was undertaken, initially identifying four bidders who were invited to participate in dialogue with the Councils.
- 3.14. In March 2018, following evaluation of detailed tenders, two of those bidders were shortlisted for further dialogue leading to the submission of final tenders on 13 December 2018.
- 3.15. At each stage of the procurement process, tenders were evaluated against multi-layer criteria established prior to OJEU issue. The first stage evaluation focused on the bidders' ability to meet the technical requirements which centered around providing a Facility capable of processing 150,000tpa of waste in line with the existing planning permission, being able to provide heat offtake to the proposed Torry Heat Network and operating the Facility within the requirements of an Environmental Permit issued by the Scottish Environmental Protection Agency (SEPA).
- 3.16. The second stage evaluation assessed the refined bids submitted from the two shortlisted bidders. Throughout both stages, the commercial and technical capabilities of the bidders to deliver the Project Agreement and associated price were assessed.
- 3.17. The Councils have now completed the tender evaluation and identified the bidder that offers the Most Economically Advantageous Tender; the preferred bidder. In accordance with IAA2, the Councils are now seeking Council

approval to award the Project Agreement to this preferred bidder on this basis.

The Preferred Bidder

- 3.18. The preferred bidder has been identified as a consortium group led by Acciona Industrial and Acciona Servicios Urbanos.
- 3.19. The preferred bidder has significant experience in energy infrastructure. It will enter into the Project Agreement through a SPV (Special Purpose Vehicle) comprising Acciona Industrial and Acciona Servicios Urbanos. The SPV will then sub-contract the construction of the Facility to Acciona Industrial and the operation of the Facility to a separate experienced waste management company owned by Indaver NV. Indaver currently operates energy from waste facilities in Ireland, Belgium and Netherlands. More details about Acciona's final tender proposals are provided in Appendix A.

Business Case Update

- 3.20. The revised business case updates the 2015 version presented to Council in October 2016. It applies updated waste data to the original assumptions and concludes that the sizing of the plant at 150,000tpa meets the Councils' projected requirements.
- 3.21. The final tender price offered by the Acciona bid, and real-time cost data from the Council's current RDF waste disposal route have been applied to the economic case for a Joint EfW (Option 3) as compared to a refuse derived fuel (RDF) export (Option 5), and concludes that the Joint EfW is still the most economically advantageous option for the Council.
- 3.22. The revised business case is provided as Appendix B.
- 3.23. The risks of development have been largely mitigated and the Acciona final tender price compares favorably against the alternative.
- 3.24. Officers consider that the Procurement exercise undertaken and the tender received from Acciona meet the Project Objectives and Criteria presented as Part 5 of IAA2. A table showing how these objectives and criteria have been met is included as Appendix C.

Stage 3 Inter Authority Agreement (IAA3)

- 3.25. In addition to approving contract award, the Councils are requested to approve the Stage 3 Inter Authority Agreement (IAA3) which is the formal and binding agreement that will allow Aberdeen City Council to work formally with Aberdeenshire Council and Moray Council for the Project Agreement duration.
- 3.26. The principles of IAA3 are provided as Appendix D. They include details of the arrangements that will govern the Project Agreement. A flowchart showing the anticipated governance arrangements is provided in Appendix E. The Council is requested to appoint the relevant Chief Officers as further detailed in the

recommendations of this report, as the Council's appointed Representative and alternate Representative on the Project Board.

- 3.27. A delegation is sought to give the Project Board the authority to determine the make-up and responsibilities of the Project's Management Team and appoint or continue the appointment of such external advisors as is required to support the Management Team.

Management Team and External Advisors to the Project

- 3.28. Existing contracts used for IAA2 will service the necessary external technical and financial support and Project Director. The anticipated expenditure on those advisors for the Works Period is contained with the expenditure approval at recommendation at 2.4.
- 3.29. It should be noted that the existing contract for external legal assistance does not extend to the Works Period. It remains likely that there will be a requirement for external legal support, possibly at short notice. To mitigate this, it is proposed that the current contract for the legal advisors is re-procured. This would allow the Council to receive the specialist advice it requires in a timely and procurement compliant manner. A business case to support this has been included as Appendix F. The estimated expenditure for external legal assistance throughout the Works Period is contained within the financial approval in recommendation 2.4

Joint Members Energy from Waste Engagement Group

- 3.30. A Joint Members Energy from Waste Engagement Group was established at the beginning of the procurement and comprises representatives from all three Councils.
- 3.31. This group was consulted on matters relating to the Project. It is considered that having this group as a sounding board for the Project is beneficial and that it should continue into the next stage.
- 3.32. A recommendation on the continued role of the group is included at recommendation 2.12.

Torry Heat Network

- 3.33. Scottish Government policy requires EfW facilities to be designed as Combined Heat and Power plants and located in areas where this potential can be realised.
- 3.34. A key benefit of locating the EfW in East Tullis is the potential to alleviate fuel poverty in the Torry area through the provision of a linked district heating network.
- 3.35. Initial high-level analysis identified in an earlier report that a district heating project that targeted the public buildings and high-density social housing within the Torry area was viable. The development of the heat network also allows the EfW to work towards thermal efficiency targets set within the Environmental

Permit. This report was approved by Communities Housing and Infrastructure Committee in January 2017.

- 3.36. Since January 2017, several further studies have been carried out in order to develop the heat network project. These have incorporated further detailed surveys, access to the latest housing data and consideration of risk, both internal and external. This has identified a number of options to deliver the Torry Heat Network. A programme of phased delivery is likely to be the best way forward.
- 3.37. The external legal advisors to the heat network project have advised that the Council should seek to agree and execute Head of Terms for heat off-take with the preferred bidder before the conclusion of the procurement process to award the Project Agreement for the design build and operate of the Facility. The details of these terms are required to finalise the business case for the heat network.
- 3.38. The Council's committee cycle does not allow for a report on the negotiated Heads of Terms to be made prior to the anticipated date of the execution of the Project Agreement for members consideration. As such, it is recommended that Council delegate authority to the Chief Officer - Capital to negotiate and conclude the Heads of Terms for the heat network project with a reasonable allocation of risk, advice having been taken on that from legal and technical advisors.
- 3.39. The conclusion of the outstanding development/procurement consideration of the heat network project, agreeing a Head of Terms with the EfW preferred bidder and achieving financial close with the EfW preferred bidder would allow the heat network project to be delivered in tandem with the delivery of the EfW.

Extending the Collaborative Working between Councils

- 3.40. While the Facility will accept the majority of residual waste from all three councils, there are some wastes that are unsuitable for acceptance due to their physical size or composition. For example, some bulky waste is too large to be processed.
- 3.41. All three councils face the same challenges and wish to work together to find a sustainable solution which will allow these items to be either diverted for reuse/recycling or treated in order to be accepted at the Facility.
- 3.42. Council is requested to approve the continuation of the collaborative working between the councils' Waste service teams and build on the good working relationships developed throughout the EfW project.

4. FINANCIAL IMPLICATIONS

- 4.1. The financial implications of the need to find an alternative to landfilling the City's residual waste post-2020 were considered by Council in Zero Waste Project Outline Business Case in October 2012 and then again in a more detailed Energy from Waste Business Case in 2013.
- 4.2. The business case was updated in 2015 in light of the proposed Joint Working with Aberdeenshire Council and Moray Council and presented to Zero Waste Management Sub-committee on 1 December 2015. The review concluded that a Joint Energy from Waste (EfW) Facility built in Aberdeen represented the best value solution for the long-term management of residual waste.
- 4.3. The business case has been updated again for this report to incorporate the outcome of the procurement exercise and the preferred bid. This is included as Appendix B.
- 4.4. A Cost Model has been prepared for IAA3 and included as Appendix G to this report. It incorporates the financial submissions from the preferred bidder, and the cost of the supporting arrangements the Council will require to put in place to manage and support the Project Agreement throughout the Works (Facility construction) and Services (operations) phases.
- 4.5. It was agreed within IAA2 that the apportionment of certain project costs should be split amongst the Councils according to the tonnage of waste produced according to the latest audited tonnage figures.
- 4.6. It is now considered that given recent and planned changes to waste collection services, the 2015 published residual household waste data as approved for IAA2 is more reflective of the expected project share needs of each council. On this basis, the shares / splits proposed for stage 3 are as follows:

NAME OF COUNCIL	PROJECT SHARE PERCENTAGE
Aberdeen City	38.09%
Aberdeenshire	47.93%
Moray	13.98%

- 4.7. The application of the project share percentage (including split of costs and revenues) is provided within the IAA3 principles document in Appendix D, and within the Cost Model.
- 4.8. The Council's share of the expected capital investment related to the Project Agreement as stated in the Principles of the Stage 3 Inter Authority Agreement included at Appendix D can be met from budget NHCP810K - Energy from Waste (EfW) Construction & Torry Heat Network within the Non-Housing Capital Programme.

- 4.9. The revenue implications of IAA3 and its Cost Model require to be incorporated into the Council's future budget planning for financial year 2021/22 onwards.

5. LEGAL IMPLICATIONS

- 5.1. To comply with the Project Agreement and IAA3, the Council must discharge the functions of Aberdeenshire Council and Moray Council as a Waste Disposal Authority (WDA) within the meaning of the Environmental Protection Act 1990 in so far as they relate to the Project and the Facility and in accordance with the Project Agreement and the Inter Authority Agreement. It has the power to do so pursuant to section 56 of the Local Government etc. (Scotland) Act 1973.
- 5.2. The Councils have developed substantial contractual documentation for the Project which define the Project requirements and acceptable commercial positions for the Councils.
- 5.3. The Project Agreement terms were drafted by external legal advisors to the Project. During the dialogue process, the bidders could propose amendments to the contract documents and these were accepted or rejected depending on the known or perceived transfer of risk involved.
- 5.4. The bids were then evaluated on the basis that any amendments had been accepted by the Project during dialogue and all other positions were as set out in the original documents.
- 5.5. The main commercial positions were approved by the Project Board as part of the original document development pre-procurement or during the procurement if the status changed. The key commercial positions are provided as Appendix H of this report.
- 5.6. As the Lead Authority, all rights and obligations under the Project Agreement primarily sit with the Council. IAA3 is therefore intended to ensure a fair split of the liability and cost associated with the obligations and the benefit of the rights and is a key document that must be executed by all three councils in advance of the Project Agreement being executed by the Council as Lead Authority.
- 5.7. The Project Agreement has a Works Period anticipated to be 36 months in length from the date the Project Agreement is signed. The Service Period thereafter continues for 20 years (unless earlier terminated due to a fault of the Contractor, a fault of the Council, a Force Majeure Event, or because the Council elects to do so).

6. MANAGEMENT OF RISK

- 6.1. The landfill ban presents a huge challenge to the Councils in terms of residual waste disposal. If an alternative solution is not agreed, then there is a risk that the Councils will not be able to collect such waste from households and the commercial premises it currently services.

- 6.2. The Council has a statutory duty to collect waste from households which cannot be undertaken if there is no disposal outlet for the waste. In addition, the non-collection of household waste would quickly become a public health concern.
- 6.3. It is possible that one or more Councils may decide not to sign IAA3 and the consequences of this depend on the Council(s) involved and the appetite of any remaining Council to continue with the project.
- 6.4. IAA2 included a clause which set out the consequences if one or more Councils elects to continue with the project and not all councils sign IAA3 (Clause 11).
- 6.5. Should Aberdeen City Council resolve to not to continue with the Project, these consequences would include:
- Substantial compensation payable towards any cost of re-procurement, cost of delay, or other associated expenses incurred by the Council(s) continuing with the project
 - Title to the site would need to be transferred to a Council continuing with the project.
 - The Council may still be required to continue to deliver Contract Waste to the Facility, but paying a market gate fee disposal rate and without receiving the benefit of a share of the energy revenues

This could mean that an EfW Facility could still be built at the East Tullos site without the involvement of Aberdeen City Council.

- 6.6. The Project Risk Register is included as Appendix I

7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	<i>These policies allow the council to mitigate the actions of the 2021 ban on biodegradable waste to landfill (Waste (Scotland) Regulations 2012) with a known and regulated cost, avoiding the unknown and changeable costs involved in shipping and selling RDF. Ability to recover value from the Council's waste.</i>
Prosperous Place	<i>This will act as an enabler for the Torry Heat Network, working to help those households in fuel poverty.</i>

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	<i>Full EHRIA not required. Evidence submitted to Equalities Team.</i>
Data Protection Impact Assessment	<i>Screening questions completed – not required</i>
Duty of Due Regard / Fairer Scotland Duty	<i>not applicable (Strategic decision making predated this duty).</i>

9. BACKGROUND PAPERS

**CHI/16/320 – Communities Housing and Infrastructure, 24 January 2017
Progress Report for Torry Phase 1 District Heating Network**

**CHI/16/257 – Council, 24 October 2016
Inter Authority Agreement on Energy from Waste (IAA2)**

**CHI/15/337 – Council, 16 December 2015
Energy from Waste Inter Authority Agreement (IAA1)**

**H&E/14/023 – Housing & Environment, 11 March 2014
Revision of the Aberdeen City Waste Strategy**

10. APPENDICES

Appendix A – Summary of Preferred Bidders Solution
Appendix B – Revised Business Case 2019
Appendix C – Comparison of Preferred Bidders Solution with Required Objectives
Appendix D – Inter Authority Agreement 3 – Principles of Agreement
Appendix E – Governance Flowchart
Appendix F – Procurement Business Case –External Legal Advisors
Appendix G – Cost Model for IAA3
Appendix H – Final Tender Risk Positions
Appendix I – Project Risk Register

11. REPORT AUTHOR CONTACT DETAILS

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